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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. CR 16-00440 WHA
	)	
Plaintiff,	)	STIPULATION PURSUANT TO FED. R. CRIM. P.
	)	23(B)(2)(A) REGARDING JURY SIZE.
v.	)	
	)	
YEVGENIY ALEXANDROVICH NIKULIN,	)	
	)	
Defendant.	)	
	)	
	)	

1. Trial in this matter began on March 9, 2020, with the empanelment of 12 jurors and 4 alternate jurors. The jurors heard testimony and evidence on March 10 and 11, 2020. The Court and the parties planned to be dark on March 12, 13, and 16, 2020. (ECF 164.)

2. During the planned break, the COVID-19 (Coronavirus Disease) outbreak was declared a pandemic, and a national and state emergency. On March 16, 2020, six Bay Area counties issued strict shelter-in-place orders. (ECF 185.) Following a hearing on March 18, 2020, this Court continued trial to April 13, 2020 based upon the public health emergency. (ECF 191.) The same week, the District promulgated General Order No. 72, modifying procedures in criminal and civil cases.

3. The ongoing public health emergency necessitated further postponements of trial, and

STIP. RE JURY SIZE  
CR 16-00440 WHA

1 continuances were ordered following hearings on April 9, April 28, and June 2, 2020. (ECF 207, 228,  
2 and 237.) Trial is set to resume on July 6, 2020, at 8:30 a.m. (ECF 236.) A modified version of General  
3 Order 72 remains in effect. The Bay Area counties are slowly reducing restrictions in their respective  
4 shelter-in-place orders.

5 4. In response to written questionnaires, several of the jurors have expressed concerns about  
6 resuming their jury service, even with safety precautions in the courtroom, such as social distancing. At  
7 least three jurors have disclosed that they have specific medical conditions that put them at higher risk of  
8 complications should they contract COVID-19. Two additional jurors live with family members who  
9 have such medical conditions.

10 5. Since April 2020, Defendant has consistently demanded that trial resume as soon as  
11 possible with the original jurors.

12 6. Although twelve-person juries are customary, they are not constitutionally required. In  
13 1970, the Supreme Court held that a six-person jury in a criminal trial does not deprive a defendant of  
14 the constitutional right to a jury trial. *Williams v. Fla.*, 399 U.S. 78, 92 (1970).

15 7. Federal Rule of Criminal Procedure 23(b)(2)(A) provides: “At any time before the  
16 verdict, the parties may, with the court’s approval, stipulate in writing that the jury may consist of fewer  
17 than 12 persons...”

18 8. WHEREFORE, in order that trial may resume on July 6, 2020, and consistent with  
19 Defendant’s constitutional rights, the parties, by and through their respective counsel, hereby stipulate  
20 and agree that the jury in this matter may consist of eleven, ten, nine, eight, seven, or six persons after a  
21 finding of good cause to excuse each juror. If the Court finds it necessary to excuse any of the current

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1 jurors or alternate jurors for good cause, then the parties stipulate and agree to go forward, so long as at  
2 least six jurors remain.

3 IT IS SO STIPULATED.

4 DATED: July 2, 2020

Respectfully submitted,

5 DAVID L. ANDERSON  
6 United States Attorney

7 /s/  
8 MICHELLE J. KANE  
9 KATHERINE L. WAWRZYNIAK  
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10 /s/  
11 ADAM GASNER  
12 VALERY NECHAY  
Counsel for Defendant Nikulin